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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Bing Zhao

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EXAMINER

HERRING, BRENT W

ART UNIT

PAPER NUMBER

3633

MAIL DATE

DELIVERY MODE

02/03/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/500,357	Applicant(s) ZHAO, BING	
	Examiner BRENT W. HERRING	Art Unit 3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 16, 2008 has been entered.

Claim Objections

2. Claims 21, 32, and 42 are objected to because of the following informalities: proper names including, but not limited to Yixue, Taiji, and Gua should not be used in the claims. Their definitions are not commonly known to a person of ordinary skill in the art and a proper definition is not provided in the specification. Appropriate correction is required.

3. Although applicant claims that a person of ordinary skill in the art in Chinese culture would have common knowledge of the expressions, this does not apply to the ordinary skill in the art of the building trades in the United States of America. Wherein the patent is being applied for in the United States, the language of the claims should be understandable to a person of ordinary skill in the art in the country of pending application.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

5. Claims 26, 30, 32-37, 39, 41, and 44-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, several of the claims depending from claim 21 recite, "wherein, said buildings," or some variation thereof. This statement is unclear because independent claim 21 claims architecture having one, several or more buildings. Therefore, it is unclear as to the scope of applicants' claims with respect to the dependent claims in relation to the independent claim.

6. Claims 21-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are replete with alternative language (i.e. having one, several or more buildings; comprise one, a part, or all, etc.) rendering the scope of the claim indeterminate.

Claims are examined as best understood.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 21-46 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, applicant is claiming “natural ecological structures” including plants and animals. Plants and animals qualify as natural phenomenon.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 21-22, 32, 42-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Whitaker, *Agricultural Buildings and Structures*.

Regarding claim 21:

Whitaker discloses a multifunctional tridimensional combined ecological architecture having one or more buildings (see Part I starting on p. 3) and comprising:

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- an ecological structure capable of use for organisms,
- a natural ecological structure,
- a place capable of use for human culture activity,
- an organism production system,
- cooperating systems;

wherein said building or buildings have a tridimensional structure and include an aboveground part (see p. 9), an underground part, wherein a top roof, sides wherein the top roof, sides, or both are partly or completely transparent (wherein the sides have windows, windows are inherently transparent, see p. 436), openable and closable, or both;

wherein said natural ecological structure and said ecological structures for organisms are provided anywhere inside or outside of the buildings, and include plants, organisms, water resource, and human cultural sights therein (see Chapter 21);

said buildings comprising various frame types;

said organism production systems comprising cultivation devices, processing devices, storing and transferring devices, and marketing devices (see Ch. 21);

said cooperating systems comprising at least a part of a water recycling system (plants inherently perform these functions, furthermore, examiner takes

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official notice that water recapture and treatment is known to persons of ordinary skill in the art; it would have been obvious to a person of ordinary skill in the art at the time of the invention to use water recycling systems because water delivery and treatment from a central plant uses an excessive amount of energy that causes it to be comparatively inefficient and less economical than water recapture and treatment on location, as taught by Placencia, U.S. Patent 5,862,544), electrical (see Ch. 14), ventilation (see Ch. 16), temperature and humidity regulating (see Ch. 16, p. 295), light transmitting (greenhouses comprised of glass inherently refract light and also allow for light transmission there through), methane (see p. 339 and p. 394, examiner takes official notice that if methane is contained and removed it is obvious to a person of ordinary skill in the art to store it in tanks because methane is a source of energy and as such, it is desirable to capture it for use, as taught by Albers, U.S. Patent 4,008,689), illumination and control systems (p. 454).;

said buildings and systems combined in a manner if part and complete combination.

Regarding claim 22:

Whitaker discloses claim 21, wherein

said water recycling system comprises a precipitation gathering and purifying device, a sewage water recuperating and classification and purifying device, an external water resource input device, a device capable of filtering and

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purifying water from air, a sanitation device, a water reservoir device and a water supply device;

said electrical system comprising a power generation and storing device, a power transmission and power supply device, a voltage transformation and power distribution device;

said ventilation system comprising an air input/output device, an oxygen supply device, and air purifying and recycling device and a sanitation device;

said temperature and humidity regulation system comprising a temperature regulating device and a humidity regulating device;

said light transmitting system comprising a light refractive device and a light transmitting device;

said methane system comprising a methane tank and a methane storing and utilization device; said control system comprising automatic, manual or both control mechanism for the systems; and

wherein the place able to be used for human culture activity comprises a place able to be used for resting and a place for sports and cultural activities.

Regarding claim 32:

Whitaker discloses claim 21, and further discloses wherein the buildings are combinable in one, a part or all of the various types of forms listed. Refer to

the figures throughout Whitaker.

Regarding claim 42:

Whitaker discloses claim 21, wherein said ecological structure capable of use for organisms and the natural ecological structure comprise at least one of an ecological structure of ecological wall type, and tridimensional warm house structure.

Regarding claim 43:

Whitaker discloses claim 21, wherein said place capable of use for human cultural activity comprises a place capable of use for culture.

Claim Rejections - 35 USC § 103

10. Claims 23-31, 33-41, and 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitaker, *Agricultural Buildings and Structures*.

Regarding claims 23-31, 33-41, and 44-46:

Whitaker discloses claims 22 and 32, but does not expressly disclose each and every limitation of the claims regarding the water filtration device, the theft alarm system, the roads and bridges, solar power devices, organisms and the other broad scope of limitations.

However, Examiner takes official notice that it is old and well known to use each of the systems and devices claimed by applicant in both combination and

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as a stand alone functioning unit. Support for this assertion includes college campuses, farms and plantations which are well known to persons of ordinary skill in the art. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have installed in and around a system of buildings each of these well-known devices and systems.

The motivation to combine each of these systems would have been to form a sustainable location that meets all of a community's needs.

Response to Arguments

11. Applicant's arguments filed December 16, 2008 have been fully considered but they are not persuasive.

12. Regarding applicant's arguments drawn to the objections of the claims, applicant claims that a person of ordinary skill in the art in Chinese culture would have common knowledge of the expressions, this does not apply to the ordinary skill in the art of the building trades in the United States of America. Wherein the patent is being applied for in the United States, the language of the claims should be understandable to a person of ordinary skill in the art in the country of pending application.

13. Regarding applicant's arguments drawn to the rejection of the claims in view of Whitaker, applicant argues that Whitaker is drawn to individual buildings that are not combined together into an architecture. However, Chapter 3 of Whitaker does in fact address the arrangement of buildings on a farm site as shown by the table of contents of Whitaker. Furthermore Whitaker DOES teach tridimensional, that is three-

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dimensional having length, width, and height buildings. The buildings of Whitaker are combinable, and Whitaker teaches combining them into a collective unit of buildings.

14. Applicant further makes arguments drawn to the intended use of the spaces of Whitaker. Applicant is reminded that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations insofar as the prior art apparatus is capable of being used in the manner as stated by the limitations of the claim.

15. Applicant is further reminded that claims in a pending application should be given their **broadest reasonable interpretation**. In the instant case, the invention as claimed is combining various types of buildings, devices, and systems into an ecological architecture. "Architecture" constitutes buildings collectively as defined by the *Random House Unabridged Dictionary*. As asserted by the rejection of the claims above, both a college campus and a farm teach multifunctional tridimensional combined ecological architectures having one or more buildings as claimed by applicant.

16. By applicant's own admission, the large scale of complex ecological architecture according to the present invention is a systematic invention. These features are disclosed by Whitaker as well as by the systematic structure of college campuses and farms throughout the world.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRENT W. HERRING whose telephone number is (571)270-3661. The examiner can normally be reached on Monday-Thursday, 8:00AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian E. Glessner can be reached on (571)272-6847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRENT W HERRING/
Examiner, Art Unit 3633

/Robert J Canfield/
Supervisory Patent Examiner, Art Unit 3635